and customer where in the instant case the Bank was acting for the Second Defendants merely for the purpose of collecting the proceeds payable under the Bill. Under this contract for collection the Bank had a right to payment of bank charges after collection and the Second Defendants had a right to damages if the Bank through negligence on its part were to fail to collect the moneys payable under the Bill. So far as the proceeds of a bill for collection are concerned it is settled law that a collecting bank must respond to the instructions of its customer as to the ultimate disposal of the proceeds. At the time when each of the said five letters was written the Bank was not indebted to the Second Defendants to the face value of the Bill or in any other sum so that on the date of each of these five letters the Second Defendants had no right created by or under the contract for collection which could be assigned to the Plaintiffs. Further it should not be forgotten that the Letter of Credit was not transferable and therefore it was not possible for the Plaintiffs to acquire any rights under it; nor that at the time when payment on the Bill was effected the Bank was acting as a collecting banker. In this case the debtor, both under the Letter of Credit and the Bill, was the Paddy Marketing Board. The right of the Second Defendants to obtain payment under the contract of supply could have been assigned by the Second Defendants to the Plaintiffs or yet again the Bill itself could have been made payable to the Plaintiffs and not to the Bank who were acting merely as collecting bankers.

In all the circumstances of the present case there was no assignment by the Second Defendants to the Plaintiffs of the rights created by or under the Paddy Marketing Board's contract of supply in their favour nor were the Plaintiffs the payees or endorsees of the Bill.

We have already found that no action in contract lies against the Bank for money had and received. In our view all the five letters relied upon, including the letter dated February 20, 1980 (AB28) finally relied upon by the Plaintiffs, were merely instructions to the Bank by the Second Defendants and no more. The appeal is allowed and the Plaintiffs' claim dismissed with costs here and below.

Appeal allowed.

Solicitors: *Rodyk and Davidson; Laycock and Ong.*

CHAY CHONG HWA & ORS. v. SEAH MARY

[C.A. (Wee Chong Jin C.J., Thean & Abdul Wahab Ghows JJ.) May 24, 1984]

[Singapore – Civil Appeal No. 86 of 1982]

Land Law – Sale and purchase of property – Administrators to sell interest of deceased in property – Whether grant of letters of administration of estate of deceased necessary for completion of purchase – Probate and Administration Act (Cap. 23), ss.2 & 37(1) & (2) – Land Titles Act (Cap. 276), s. 92(1).

Probate & Administration – Sale agreement – Administrators to sell interest of deceased in property – Whether grant of letters of administration of estate of deceased necessary for completion of purchase.

Land Law – Sale and purchase of property – Scope of The (Revised) Singapore Conditions of Sale, Condition 5.

Conveyancing – Whether grant of letters of administration of estate of deceased necessary for completion of purchase.

The first, second and third appellants and one Lee Ee Hoong, deceased were registered proprietors as tenants in common in equal shares of land together with a house at 12, Sunset Square, Singapore (the property). The fourth appellants were the administrators of the estate of Lee Ee Hoong (the deceased) who died on March 16, 1975. By an agreement dated September 30, 1980, the appellants agreed to sell to the respondent the property at the price of $420,000 and in such sale the fourth appellants were selling the interest of the deceased in the property as administrators. As at the date of the sale agreement the fourth appellants had not extracted the grant of letters of administration of the estate of the deceased, though an order for the grant was made on October 10, 1975 by the Asst. Registrar. The grant was extracted only on May 5, 1981. When completion of the sale and purchase of the property was to take place, the solicitors acting for the respondent requested for production of the grant of letters of administration of the estate of the deceased. The solicitors acting for the appellants, on the other hand, took the view that it was not necessary to produce such a grant; the only proof that needed to be produced to the Registrar of Tiles for the purpose of registering the transfer of the property was the order made for the grant. The said order was given in the form of the words, "Be it so" appearing at the bottom of the petition signed by the Assistant Registrar of the High Court. The solicitors for the respondent did not withdraw the requirement. The solicitors for the appellants invoked condition 5 of The (Revised) Singapore Conditions of Sale and wrote a further letter to the solicitors for the respondent stating that as the requirement for production of the grant had not been withdrawn, the sale was annulled. On March 13, 1984, the respondent took out an originating summons.

The summons was heard by Lai Kew Chai J. who held that the production of the grant of letters of administration of the estate of the Deceased was required for completing the sale of the property, and made an order in

terms of the summons. The appellants appealed against that decision.

Held, dismissing the appeal: (1) without extracting the grant of letters of administration of the estate, the fourth appellants were unable to complete the sale of the deceased's undivided one quarter share of the property. At the time of sale the said share was still registered in the name of the deceased, and to enable them to complete the fourth appellants must first apply to have the said shares transmitted to themselves as registered proprietors under section 92(1) of the Land Titles Act (Cap. 276);

(2) in a contract of sale and purchase of property a condition such as condition 5 of The (Revised) Singapore Conditions of Sale does not confer on the vendor a wide and unfettered right to annul the contract. In determining whether a vendor can avail himself of such a condition the court will look closely at the conduct of the parties to the contract. In particular, in relation to the matter objected to or required by the purchaser to be complied with, the vendor must not have been guilty of "recklessness" in entering into contract, and unwillingness on the part of the vendor to meet the objection or comply with the requirement raised by the purchaser must not in the circumstances be unreasonable;

(3) the fourth appellants had not shown any reason why such grant was not obtained and no attempt was shown to have been made to extract the grant. In these circumstances the appellants had acted unreasonably and were not entitled to exercise their right of rescission of the Sale Agreement under condition 5. The annulment was therefore invalid and had no effect whatsoever.

Cases referred to:

(1) *M.T.A. Mootiah Chitty* v. *Ong Hai Swee & Anor.* (1911) 12 S.S.L.R. 84.
(2) *Duddell* v. *Simpson* (1866) 2 Ch. App. 102.
(3) *In re Jackson and Haden's Contract* [1906] 1 Ch. 412.
(4) *Selkirk* v. *Romar Investments, Ltd.* [1963] 3 All E.R. 994.

COURT OF APPEAL.

Ruth Kao for the appellants.

Ng Wing Cheong for the respondent.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The first, second and third Appellants and one Lee Ee Hoong, deceased are registered as proprietors as tenants in common in equal shares of the land, Lot 960 of Mukim V, Pandan, together with a house thereon known as 12, Sunset Square, Singapore ("the property"). The fourth Appellants are the administrators of the estate of Lee Ee Hoong deceased ("the Deceased") who died on March 16, 1975. By an agreement dated September 30, 1980 ("the Sale Agreement") the Appellants agreed to sell to the Respondent the property at the price of $420,000 and in such sale the fourth Appellants are selling the interest of the Deceased in the property as administrators. As at the date of the Sale Agreement the fourth Appellants had not extracted the grant of letters of administration of the estate of the Deceased, though an order for the grant was made on October 10, 1975 by the Assistant Registrar of the High Court. In fact, the grant was extracted only on May 5, 1981.

Under Clause 4 of the Sale Agreement the Appellants were to obtain a certificate from the Commissioner of Estate Duties releasing the property from any claim for estate duty payable thereon in respect of the death of the Deceased and under Clause 9 thereof completion of the sale and purchase of the property was to take place within 14 days after the Respondent had received notice of such certificate. On the date when the Sale Agreement was executed, i.e. September 30, 1980, the fourth Appellants had already obtained the certificate dated September 4, 1980 from the Commissioner under section 37(1) of the Estate Duties Act (Cap. 137), and immediately after the Sale Agreement was executed the Appellants gave notice thereof to the Respondent. When completion of the sale and purchase of the property was to take place, the solicitors acting for the Respondent requested for production of the grant of letters of administration of the estate of the Deceased. The solicitors acting for the Appellants, on the other hand, took the view that it was not necessary to produce such a grant; the only proof that need to be produced to the Registrar of Titles for the purpose of registering the transfer of the property was the order made for the grant, and this proof could be given in the form of a certified copy of the petition for the grant with the said order endorsed thereon. The said order in this case was given in the form of the words, "Be it so" appearing at the bottom of the petition signed by the Assistant Registrar of the High Court. As it transpired, no agreement on this point was reached between the respective solicitors, and on January 21, 1981 the solicitors for the Appellants invoked condition 5 of The (Revised) Singapore Conditions of Sale (which is a term of the Sale Agreement) and gave 10 days' notice in writing to the solicitors for the Respondent to the effect that if on the expiry of 10 days from the date of the notice the Respondent did not withdraw her requirement for production of the grant of letters of administration of the estate of the Deceased, then pursuant to that condition the sale would be annulled. The solicitors for the Respondent did not withdraw the

requirement, and on February 4, 1981 the solicitors for the Appellants wrote a further letter to the solicitors for the Respondent stating that as the requirement for production of the grant had not been withdrawn, the sale was annulled.

The Respondent then on March 13, 1984 took out an originating summons, entered as No. 128 of 1981, pursuant to section 4 of the Conveyancing and Law of Property Act (Cap. 268) applying for, *inter alia,* the following reliefs, namely:

(a) a declaration that the fourth Appellants are not entitled to call upon the Respondent to complete the purchase of the property without the production of the grant of letters of administration of the estate of the Deceased;

(b) a declaration that the notice dated January 21, 1981 given to the Respondent pursuant to condition 5 of The (Revised) Singapore Conditions of Sale is invalid, and

(c) a declaration that the Sale Agreement is still subsisting and binding on the parties thereto.

The summons was heard by Lai Kew Chai, J. who held that the production of the grant of letters of administration of the estate of the Deceased was required for completing the sale of the property, and made an order in terms of the summons. Against that decision the Appellants appealed. At the conclusion of the appeal we dismissed it with costs to the Respondent.

Before us several points were raised and argued by Miss Kao for the Appellants, including a point of procedure that the matter should not have been brought before the Court by way of an originating summons under section 4 of the Conveyancing and Law of Property Act (Cap. 268) but by a writ of summons, on the ground that there were facts in dispute. We have no doubt in our minds that the matter before us falls squarely within the ambit of the said section 4 and the originating summons initiated by the Respondent is the appropriate procedure for bringing the matter before the court. From the affidavits filed in support and in opposition thereof there does not appear any dispute on the facts relevant to the points in issue. Essentially this appeal revolves on only two issues:

(a) First, as the fourth Appellants are selling the undivided one quarter share of the Deceased in the property as personal representatives, whether the grant of letters of administration of the estate of the Deceased is required to be produced for the purpose of completing the sale, and

(b) Secondly, if the answer to the above is in the affirmative, whether the Appellants were justified in invoking condition 5 of The (Revised) Singapore Conditions of Sale.

The first issue was resolved as long ago as 1910 by the decision of the Court of Appeal in *M.T.A. Mootiah Chitty* v. *Ong Hai Swee & Anor.*[1] In that case the owner of certain leasehold premises agreed to sell them to one Tan Kah Kee who then entered into a contract to sell them to a purchaser who in turn entered into a further contract to sell the same to a sub-purchaser. Before completion of the sale of the premises to Tan Kah Kee the owner died. Prior to his death the owner had made a will, and his executors applied to court for a grant of probate. The court made an order for the grant of probate but the grant was not extracted until much later. In the meanwhile, the sub-purchaser required completion of the sale of the premises to him by the purchaser. On the date fixed for completion the purchaser tendered an assignment executed by the executors of the will of the owner, by Tan Kah Kee and by him together with a certified true copy of the executors' petition for a grant of probate with the order for the grant in terms of the prayer, i.e. the words "be it so" endorsed thereon and also an office copy of the testator's will. The sub-purchaser refused to accept such documents on the ground that no evidence was disclosed of the executors' title to assign and of their power to give a complete discharge for the payment of the purchase money. It was held by the Court of Appeal that the sub-purchaser was entitled to refuse to accept such title from the purchaser. Thornton, J. in the Court of Appeal at page 92 said:

> "*Pinney* v. *Pinney*, 8 B. & C. 335, already referred to and all the cases that were referred to on behalf of the appellant all go to show that a grant of Probate under the seal of the court must first be made before an executor is able to give a complete indemnity to a purchaser for the purchase money. Mr. Emerson has not been able to point to a single case which supports the view he pressed on the court; he has referred to certain passages in Williams and Ingpen which seem to suggest that some other evidence than the Probate may be accepted, but it is not at all clear that those passages refer to anything else than to those cases where an exemplification or office copy or other evidence of the fact of Probate having issued has been accepted by the court in lieu of the Probate itself."

Admittedly, as was pointed out in that case, there is a difference of practice which exists here and in England in the manner in which a grant of probate is obtained. In England the proof that the

revenue authorities have been satisfied is a preliminary step to the proof of the will and in Singapore the reverse process occurs. Such difference however, does not affect the position. Thornton, J. at page 93 said:

"This difference in the practice of granting Probate it seems to me does not affect the present question. The authorities and long established practice of conveyancers in England which entitle a purchaser to demand production of a Probate by the vendor apply with equal force in this Colony. If default is made by the vendor in the production of such a Probate at or before completion when time, as here, has been made of the essence of the contract, a material proof of one of the links in the title is missing, and the purchaser in my opinion is justified in refusing to complete."

Miss Kao relied on section 37 of the Probate and Administration Act (Cap. 23), which section was introduced by the Probate and Administration (Amendment) Act, 1965, and contended that by virtue of sub-section (2) thereof, the production of a grant of letters of administration should not be necessary. We are unable to accept such an argument. Sub-section (1) of the said section 37 provides that where a person dies intestate his movable and immovable property shall vest in the Chief Justice and under sub-section (2) thereof on the making of an order for a grant of administration by the court all such property shall vest in the administrator. Plainly this section concerns only with the vesting of property, movable and immovable, of a person dying intestate so as to avoid a situation where the property of the deceased is not vested in anyone. The mere vesting of such property by operation of law does not authorise an administrator to deal with the same. He must proceed to extract the grant of letters of administration and only upon such grant being extracted is he clothed with the authority and power to deal with the property of the deceased. Under section 2 of the Probate and Administration Act letters of administration means a grant under the seal of the court issuing the same authorising the person or persons named therein to administer an intestate's estate in accordance with the law.

In our opinion, without extracting the grant of letters of administration of the estate of the Deceased, the fourth Appellants are unable to complete the sale of the Deceased's undivided one quarter share of the property. At the time of the sale the said share was still registered in the name of the Deceased, and to enable them to complete the fourth Appellants must first apply to have the said share transmitted to themselves as registered proprietors under section 92(1) of the Land Titles Act (Cap. 276). This sub-section provides:

"(1) Personal representatives or any other persons claiming land of deceased proprietor may apply in the prescribed form to become registered as proprietors by transmission of the land, and upon proof of their representation or claim the Registrar shall enter on the folio of the land register, or on the instrument of mortgage, charge, or lease, as the case may be, a memorial of registration as provided by section 24".

The prescribed form referred to in this sub-section is Form 26, as provided under the Land Titles Rules, 1979, and in making an application for transmission in that Form the fourth Appellants will be required to lodge together with that Form an office copy of the grant of letters of administration of the estate of the Deceased. Upon or after transmission of the said undivided one quarter share, the fourth Appellants may proceed to transfer the same pursuant to the Sale Agreement and the instrument of transfer will then be expressed to be executed by them as registered proprietors, though in fact they are executing the same as personal representatives of the Deceased. It appears from the Record of Appeal that the transfer was expressed to be executed by them as personal representatives of the Deceased. Miss Kao appears to have taken the view that it is not necessary to have the undivided one quarter share of the Deceased transmitted to the fourth Appellants and on the basis of section 47(2) of the Land Titles Act the fourth Appellants can execute and deliver the transfer as a personal representative of the Deceased. (See the letters dated November 13 and December 1, 1980 from her to the solicitors for the Respondent). This, with respect, is not correct. It seems to us that only in the instances enumerated in paragraph (a) of section 93 of the Land Titles Act may a transfer executed by a personal representative, qua a personal representative, be accepted for registration without the need of a transmission application; in all other cases a personal representative must first apply for a transmission before he can execute and deliver a transfer of any interest in the land belonging to the deceased. Section 47(2) of the Land Titles Act is of no assistance on this point. That sub-section sets out a series of exceptions to the general rule under sub-section (1) of section 47 which requires an instrument to be executed by a registered proprietor. In no way does section 47(2) vest in a personal representative any authority to execute an instrument which he does not otherwise possess.

We now turn to the second issue in this appeal:

whether the Appellants have validly exercised the right of rescission of the Sale Agreement under condition 5 of The (Revised) Singapore Conditions of Sale. This condition is a very common one and is frequently found in agreements for sale and purchase of immovable property in Singapore. It is also reproduced *verbatim* as condition 5 of The Singapore Law Society's Conditions of Sale which are now normally adopted by legal practitioners in Singapore. The terms of this condition ("condition 5") are as follows:

"5. If the purchaser shall make and insist on any objection or requisition either as to title, Conveyance or any matter appearing on the Particulars, Sale Plans, Conditions or otherwise, which the Vendor shall be unable, or on the ground of difficulty, delay or expense or on any other reasonable ground, be unwilling to remove or comply with, the Vendor shall, notwithstanding any previous negotiation or litigation, be at liberty, on giving to the Purchaser or his Solicitor not less than ten days' notice in writing to annul the sale, in which case (unless the objection or requisition shall have been in the meantime withdrawn) the sale shall at the expiration of the notice be annulled, the Purchaser being in that event entitled to a return of the deposit but without interest, costs or compensation".

It is obviously a condition for the benefit of a vendor giving him a right in certain circumstances to rescind the contract which has been validly made. Such a condition is undoubtedly of a very drastic nature, and understandably the courts in exercise of their equitable jurisdiction have evolved certain principles qualifying such right of the vendor. In *Duddell* v. *Simpson*[2], a vendor entitled to an underlease for a term of twenty-four years, less three days, sold his property as held under a lease for a term of twenty-four years relying on the promises of persons entitled to the three days to concur and join in the sale, which such persons ultimately refused. The purchaser, however, insisted on such concurrence and as it was not possible to comply with such requirement the vendor relying on a condition of sale of the kind as condition 5 annulled the contract. Turner, L.J. in giving judgment for the vendor said at page 107:

"I think that in a case where the vendor annuls the contract on the ground of unwillingness, he must shew some reasonable ground for unwillingness; thus, for instance, he may shew that if he proceeds to comply with a requisition, he will be involved in expenses far beyond what he ever contemplated, or be involved in litigation and expense which he never contemplated, and for avoiding which he reserved to himself the power of annulling the contract. But to say that a vendor, upon a condition of that description, could annul a contract *brevi manu*, without attempting to answer any of the requisitions which are made on the part of the purchaser would be opposed both to principle and authority; for that would, in truth, be giving to the vendor the power of saying that which was intended as a sale, shall, in truth, be no sale at all.

These principles were approved in the case of *In re Jackson and Haden's Contract*[3] where the Court of Appeal held that the vendor in the circumstances of that case was not entitled to avail himself of a similar condition to annul the contract. Collins, M.R. at page 419 said:

"Now, it is to be noted that, in dealing with this right to rescind, the learned judges have always criticized most carefully the conduct of the parties to the contract, and the purpose for which the particular condition must be supposed to have been introduced, with a view to seeing whether or not it is in the circumstances of the particular case, a condition that ought to be applied for the benefit of the person who has introduced it.

Further on page 422 he said:

"As I have already said, numerous cases have been most carefully set before us, which I have had the opportunity of examining as they were read, and it seems to me that, in every case where the vendor was allowed to avail himself of a stipulation like this, there was always absent that element of shortcoming on his part which, though falling short of fraud or dishonesty, might be described as 'recklessness'. The distinction is well put in the two cases that I have just read; but in none of the cases in which the vendor was allowed to avail himself of that condition was there anything which could be really imputed to the vendor as at all in the nature even of recklessness, much less of fraud or dishonesty."

Selkirk v. *Romar Investments, Ltd.*[4] is another case where a condition of sale similar to condition 5 was invoked by the vendor to rescind the contract and the Judicial Committee of Privy Council there held that in the circumstances of that case the exercise by the vendor of his right of rescission was not arbitrary or capricious or unreasonable. At page 999 Viscount Radcliffe said:

"Now, on what can the appellant rest his claim to set aside the respondent's notice of rescission? It is plain enough that, so far as the terms of the contract go, the respondent is within its rights. Clause 3(3) is as much a part of the various undertakings and stipulations that make up the total nexus of the parties' agreement as any other of its clauses and it is in fact a stipulation that was included in the draft put forward by the purchaser. If a vendor, having stipulated for or been conceded such a right, is to be precluded from asserting it in any particular context, it must be by virtue of some equitable principle which enures for the protection of the purchaser; and it is not in dispute that courts of equity have on numerous occasions intervened to restrain or control the exercise of such a right of rescission in contracts for the sale of land, despite what, on the face of the contract, its terms seems to secure for the vendor.

It does not appear to their lordships, any more than it did

to the learned judge who tried the action, that there is any room for uncertainty as to the nature of the equitable principle that is invoked in these cases. It has frequently been analysed, and frequently applied, by Chancery judges, and, although the epithets that describe the vendor's offending action have shown some variety of expression, they are all related to the same underlying idea, and their variety is only due to the fact that, as each case is decided according to the whole context of its circumstances and the course of conduct of the vendor, one may illustrate more vividly than another some particular aspect of that idea. Thus, it has been said that a vendor, in seeking to rescind, must not act arbitrarily, or capriciously, or unreasonably. Much less can he act in bad faith. He may not use the power of rescission to get out of a sale *'brevi manu'*, since by so doing he makes a nullity of the whole elaborate and protracted transaction. Above all, perhaps, he must not be guilty of 'recklessness' in entering into his contract, a term frequently resorted to in discussions of the legal principle and which their lordships understand to connote an unaccepted indifference to the situation of a purchaser who is allowed to enter into a contract with the expectation of obtaining a title which the vendor has no reasonable anticipation of being able to deliver. A vendor who has so acted is not allowed to call off the whole transaction by resorting to the contractual right of rescission (see *Re Jackson and Haden's Contract* [1906] 1 Ch. 412; *Baines* v. *Tweddle* [1959] Ch. 679)".

From these authorities it is clear that in a contract of sale and purchase of property a condition such as condition 5 does not confer on the vendor a wide and unfettered right to annul the contract. In determining whether a vendor can avail himself of such a condition the court will look closely at the conduct of the parties to the contract. In particular, in relation to the matter objected to or required by the purchaser to be complied with, the vendor must not have been guilty of "recklessness" in entering into the contract, and unwillingness on the part of the vendor to meet the objection or comply with the requirement raised by the purchaser must not in the circumstances be unreasonable. A vendor cannot in reliance on such condition arbitrarily, capriciously or unreasonably rescind the contract, and certainly he cannot do so acting in bad faith.

With these principles in mind we now consider whether in this case the Appellants were justified in invoking condition 5. On this point two aspects need to be examined: first, whether the Appellants had behaved recklessly in entering into the Sale Agreement when at that time the fourth Appellants had not extracted the grant of letters of administration of the estate of the Deceased, and secondly, whether their unwillingness to produce the grant of letters of administration was reasonable in the circumstances. In so far as we can glean from the Sale Agreement and the correspondence in exchange between the solicitors for the Appellants and the solicitors for the Respondent, the Appellants and in particular the fourth Appellants in entering into the Sale Agreement were acting under a mistaken impression of the law relating to the requirement of the grant of letters of administration of the estate of the Deceased. At the time when the Sale Agreement was signed, i.e. September 30, 1980, the fourth Appellants had already obtained a certificate from the Commissioner of Estate Duties under section 37(1) of the Estate Duties Act in relation to the undivided one quarter share of the Deceased in the property. Armed with that certificate and relying on section 37(2) of the Probate and Administration Act and section 47(2) of the Land Titles Act the Appellants were of the view that they could validly and effectually transfer the whole of the property to the Respondent. Presumably this is the reason for the existence of Clause 4 in the Sale Agreement and for completion to take place within fourteen days after such certificate was obtained. This was also evident from the letters of October 24, November 13 and December 1, 1980 written by the solicitors for the Appellants to the solicitors of the Respondent and in particular in the first of the three letters the solicitors for the Appellants said in paragraph 3:

"Further you are aware that if the Grant of Letters of Administration had been extracted there would have been no necessity for us to obtain the Certificate under section 37(1) of the Estate Duty Act".

It is of course true that if the grant of letters of administration had been obtained at that time there would be no necessity for obtaining the certificate. However, whatever might have been the reason for obtaining such a certificate, it does not follow that with such a certificate the issue of the grant can be dispensed with. The only effect such a certificate has is to release the one quarter undivided share of the Deceased in the property from any claim for estate duty payable on the death of the Deceased. Clearly, on this point the Appellants erred. But it seems to us that there was a genuine mistake and on that basis it cannot be said that they were guilty of any recklessness in entering into the Sale Agreement.

We now turn to consider whether the Appellants in the circumstances acted reasonably in refusing to produce the grant of letters of administration of the Deceased. They have consistently maintained that they were not required to produce the grant and that production by them of a certi-

fied copy of the petition by the fourth Appellants for letters of administration of the estate of the Deceased was sufficient. However, they have not shown any reason why such grant was not obtained or could not be obtained at the time for completion of the sale and purchase of the property or shortly thereafter; what steps, if any, had been taken to extract it or what delay and expenses would be entailed in obtaining it. Nor had they explained why they were unable or unwilling to extract the grant. No attempt was shown to have been made to extract the grant when confronted with a request by the Respondent to produce it. They took a very defensive position and were not prepared to re-examine the question whether in law the grant should be produced. They assumed a lofty and inflexible posture that they did not have to produce the grant and on that basis they proceeded to exercise their right under condition 5 to rescind the Sale Agreement. In these circumstances the conclusion that the Appellants acted unreasonably in invoking condition 5 is irresistible, and we are of the opinion that they were not entitled to exercise their right of rescission of the Sale Agreement under condition 5. The annulment was therefore invalid and had no effect whatsoever.

Appeal dismissed.

Solicitors: *Ruth Kao; Ng, Wong & Chung.*

KIM TENG REALTY PTE. LTD. v. OOI HOE SAN t/a SENG BEE RUBBER CO.

[C.A. (Sinnathuray, Lai Kew Chai & Thean JJ.) May 25, 1984]

[Singapore – Civil Appeal No. 85 of 1982]

Landlord & Tenant – Rent-controlled premises – Breach by tenant – Rent of sub-letting in excess of 110% of recoverable rent paid by tenant – Whether premises recoverable by landlord – Whether sub-tenant a statutory tenant – Control of Rent Act (Cap. 266), ss. 15(1)(g) & 27.

Landlord & Tenant – Statutory tenancy – Conditions for.

The appellants in this case were the owners of rent-controlled premises at no. 327 Beach Road, Singapore (the said premises) which they purchased in 1972. Prior to the purchase, the said premises were let out to one Ng who sub-let the whole of the premises to the partnership of Seng Bee Rubber Company (of which the respondent was one of the partners) for a term of 3 years from October 1, 1970 to September 30, 1973. The appellants served a Notice to Quit dated October 26, 1972 determining the tenancy of the said premises on November 30, 1972. In the meanwhile 3 further agreements in Chinese dated October 1, 1973, October 1, 1974 and October 1, 1976 respectively relating to the letting of the said premises were made between Ng and Seng Bee Rubber Company covering 3 successive periods, viz. October 1, 1973 to September 30, 1974, October 1, 1974 to September 1976, and October 1, 1976 to September 30, 1979.

On August 30, 1975 the respondent's partners retired from the partnership firm and he became the sole proprietor of the business. On September 6, 1979 the appellants served on Ng a second notice to quit to determine his tenancy of the premises on October 31, 1979. Subsequently the appellants instituted proceedings in the District Court against Ng and the respondent, claiming possession of the premises and mesne profits.

In the course of the trial before the learned District Judge evidence came to light that Ng had been receiving rent from the respondent in excess of 110% of the recoverable rent paid by Ng to the appellants. The learned judge gave judgment for the appellants against Ng for possession and for payment of mesne profits in the sum of $163.20 per month from October 31, 1979 and costs. As against the respondent the learned District Judge found that no sub-tenancy to the respondent was created by Ng and vis-a-vis the appellants the respondent was only a licensee. The respondent appealed against the said decision. Rajah J. allowed the appeal and held that the learned District Judge having found for the appellants against Ng under section 15(1)(g) of the Control of Rent Act (Cap. 266) (the Act), should have further held, as a necessary consequence thereof, that the respondent by virtue of section 26 of the Act, had become and was at all material times a statutory tenant of the appellant. He found that Ng was in possession of the said premises at the time the second notice to quit dated September 6, 1979 was served on him. The appellants appealed against the decision of Rajah J.

Held, dismissing the appeal: (1) the second notice to quit served on Ng was an act of surplusage and had no effect whatsoever. The first notice to quit dated October 26, 1972 was duly served on Ng and effectively determined the contractual tenancy of Ng on its expiry, i.e. November 30, 1972. At that time Ng, having sub-let the whole of the premises to Seng Bee Rubber Company was not in actual possession of the premises. Ng did not therefore become a statutory tenant within the meaning of section 27 of the Act;

(2) upon the determination of the contractual tenancy of Ng, the contractual sub-tenancy of the partners also determined and they became statutory tenants of the premises;

(3) the respondent and his partners at that time held the statutory tenancy of the said premises as joint tenants and his tenancy as a joint tenant remained vested in him after his partners retired from the firm, and the respondent became a statutory tenant of the appellants;

(4) the three agreements purporting to create a sub-tenancy of the said premises had no such effect at all, as at that time, Ng was already a trespasser and could not